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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1091 100

WILLIAM A. DOSS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

A. M. FITZGERALD,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 1091

WILLIAM A. DOSS,

vs. *Petitioner,*

PEOPLE OF THE STATE OF ILLINOIS.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, William A. Doss, respectfully prays that writ of certiorari issue to review a decision of the Supreme Court of the State of Illinois, affirming the judgment and conviction of the petitioner in the Circuit Court of Piatt County in the State of Illinois of criminal contempt of said Circuit Court of Piatt County, by which affirmance by the Supreme Court of the State of Illinois the sentence of the Circuit Court of Piatt County, Illinois, of a fine in the sum of two thousand dollars and imprisonment in jail for a period of three months was affirmed by the Supreme Court of Illinois.

I.

Short Statement of the Case.

The petitioner was charged in an information for contempt of court. An amended information was filed on May 13, 1942, and the original information is therefore not here in issue. The information charges that a Grand Jury for the Circuit Court of Piatt County was impaneled for the first Monday in October, 1941, and began its investigations, continuing in session until January 15, 1942. The purpose of the Grand Jury being called was to investigate, and if possible, return indictments against the petitioner for criminal libel. Petitioner had been engaged and was the publisher of a newspaper called, Liberty Press and the information accordingly charges that while such Grand Jury was in session the petitioner caused to be delivered to the foreman and a majority of the members of such Grand Jury, copies of his publication issued on November 8, 15th, December 23rd, 26th, 1941, and January 10th, 1942; that the delivery of such newspapers to the Grand Jurors was contemptuous and unlawful and intended to influence the Grand Jurors in the performance of their duties and to impede, obstruct and interfere with the administration of public justice. Copies of the respective publications were attached to the information and made a part thereof by reference. The substance of such published articles is briefly abstracted below.

A.

THE NEWSPAPER ARTICLES CLAIMED TO CONSTITUTE CONTEMPT OF COURT.

(a—Issue of November 8, 1941.) This publication consisted of forty-six mimeographed legal size pages and the information refers to pages 1, 39, 40, 41 and 42 of said issue. The

petitioner in this publication first stated that he was aware that the Grand Jury was about to meet and that the States Attorney, one Glasgow, was calling such Grand Jury into session for the purpose of indicting the petitioner. Petitioner then gave notice to the States Attorney and to each Grand Juror of his willingness to appear voluntarily before such Grand Jury, sign immunity waiver and testify on any and all subjects which the States Attorney or the Grand Jurors desired, calling attention in such notice to his constitutional right to publish facts and the truth concerning any person or any subject matter, when done with good motives and for justifiable ends. The article mentions and reviews several activities on the part of the States Attorney and other lawyers of Piatt County which the petitioner charged would bear investigation, and notifies the Grand Jury that it has the legal right and it is its duty to hear evidence concerning any crime of any person and to initiate investigations, whether the States Attorney so advises or not. The article states that "Now is as good a time as any to start to clean out the Court House", and advises the Christian people of Piatt County to contact the Grand Jurors and ask them to investigate all things in Piatt County. The article gives the names of the foreman and twenty-two members of the Grand Jury. The article further recites the details of several criminal matters arising in Piatt County with which the States Attorney had been connected, and informs the public of the particular unprofessional, illegal and criminal connections of the States Attorney with those various proceedings.

(b—Issue of November 15, 1941.) This issue consists of forty mimeographed legal size pages. The information specifically refers to items appearing on pages 10, 17, 37 and 38, and that certain statements were made in the said publication which were contemptuous. Such article

informed the people of Piatt County that the State's Attorney, Glasgow, in the Muse bastardy case, told and instructed a witness that such witness need not testify, and that such witness could refuse to testify on the constitutional ground that he might incriminate himself, and inquired why the State's Attorney of Piatt County should do anything to hinder, conceal or hold back the truth in a criminal case. The article further reviews the improper activities of the State's Attorney in various legal matters in Piatt County, and on page 37, informs the public that the most contemptible thing which "they could do was to try to have Carl Glasgow, State's Attorney, get the grand jury to indict Judge Doss (the petitioner)"; and on page 38, the published article continues by stating, "you can now understand why it is important to elect a State's Attorney who is really honorable, entirely fair, entirely square to every citizen, with favors to none, and that all shall be treated alike."

(c—Issue of December 23, 1941.) This article informs the public that the State's Attorney, Glasgow, as the tool and instrument in the hands of gangism and attorney power in Piatt County, had appeared before the Grand Jury as a witness, and that having so appeared as a witness, could not sign the indictment as the State's Attorney, and that in order "to cover up" he was getting some other attorney out of the County especially appointed as State's Attorney for the sole purpose of indicting Judge Doss (the petitioner), but that the Supervisors of Piatt County would not authorize the hiring of a Special State's Attorney for that purpose. The article further states that the publisher knows of no law that he was violating and that it certainly could not be contempt of Court to drop Liberty Press issues throughout the County, as Churchill, over in England, was doing over Germany; and the article was not

concealed from anybody, but could even reach the hands of the three Circuit Judges of the district and that if the Grand Jurors could have a copy of that issue they could read the full and complete law on the subject as well as any lawyer could tell them. The article further informed the public that the publisher had never admitted that he was guilty of either civil or criminal libel because the articles published were the truth and were published for good purposes and justifiable reasons. The article told the Grand Jury that it was its duty to consider all the law in any matters that they were investigating and that they should read Section 404 of the Illinois Criminal Code; the article then charged that the reason Shonkwiler, Hutson, Hawbaker and others have not sued the publisher for any damages is because, under Section 6, Chapter 126, Illinois Revised Statute, the publisher can prove the truth of the charges made in the publication as a defense. The article further stated, "No grand juror is bound to accept the interpretation of the law by any State's Attorney. They have taken no oath to do that. If the law were otherwise, then a designing and wicked-minded State's Attorney, as — — — —, can cause irreputable damages, and that is contrary to the spirit o. our Bill of Rights and our Constitution and our Statutes of Illinois, and I charge he has given improper instructions as to the law to our present grand jurors and caused them to take positions adverse to me which otherwise they would not have taken and which they now regret." The article further states, "that the Grand Jurors, not being lawyers, naturally do not know what may be, or may not be, the legal position of an indictment in their hands not yet actually filed and returned to the honorable court—but if they will inquire of any of the three honorable Circuit Judges of this district, they will be advised that as long as an indictment is still in their

hands and has not actually been filed in court the Grand Jury can reconsider the same upon their own motion and withdraw it if they should so decide", and further that "The Grand Jury can require and should require no legal advisor to them to be in their room when they vote an indictment or other matters. The article continues with a statement, "Nothing that I have said herein is intended as charging any disrespect of any kind to the honorable Circuit Court of Piatt County, nor any of its Judges, no matter what Judge or Judges have presided upon any of the matters to date, and the only comment that I would make is, that I think the Judges have done a pretty good job in handling a terrible legal mess that they have been obliged to face and try to manage in the best way that they can with due regard and fairness to the best interest of the parties concerned."

(d—Issue of December 26, 1941.) This article is similar in tone and substance to the previous article, but concludes by stating, "I have published this article to show that really what is causing the world war today is because the world does not recognize and it not willing to live by the principles set forth in our Federal Bill of Rights! This is a vital matter and it is singular that this attorney gang issue could come up in the way that it has, and now presents an issue before our honorable Grand Jury of this County, so it will construe and give life and effect—or death, to not only our Federal Bill of Rights, but our State of Illinois Constitution and our own Statute on the freedom of speech and freedom of publication, as applied to Piatt County."

(e—Issue of January 10, 1942). The article recites that the Circuit Clerk has sent out a notice to the Grand Jury to return on the 15th, which is the last day of the October Term of Court and that the writer is accordingly much

disappointed that they have not been called sooner and because the foreman, Ed. Kanitz, has not called the Grand Jury sooner himself since the publisher had placed several matters in his hands which he cannot possibly dispose of on January 15th, and it looks like those matters are not going to be investigated and that is not as it should be. The article continues by stating that if there were matters that certain attorneys wanted investigated, they would through the State's Attorney, have the Grand Jury back here every day, but now that those attorneys have found out that their scheme is about to touch hot irons, to their own skins, they do not want the Grand Jury to come back, and the publisher further states, "I believe that when the people of Piatt County fully understand this,—another dirty trick of these attorneys,—that they will demand that something be done about these things, and while this Grand Jury, under the guidance of Ed Kanitz, as foreman, may not go into these things, maybe the next Grand Jury will", and the writer expresses the hope that the court of public opinion, the people, will demand a full, fair, frank and honest investigation of all matters and that they are welcome to investigate every charge the writer has made in the Liberty Press, from even the first issue and that the writer will prove his charges and prove his justification.

(Conclusion of Information.)

The information concluded that the matters so published in the Liberty Press were all calculated to prevent, frustrate, influence and interfere with the progress, operation and conduct of the investigation before the Grand Jury and to intimidate and influence it in the performance of its duties and such as to bring the authority and dignity of the court into disrepute and to impair the reputation of the court, to thwart and hinder the due administration of jus-

tice by the court, and that each of the statements aforesaid were willful, wrongful, unlawful, malicious and contemptuous of the court; the information then continued with a prayer that a citation issue out of said court requiring the respondent to appear before said court in a short day to be fixed, to show cause if any, why he should not be punished for contempt of court.

B.

The Pleadings.

To such information and the amended information, the defendant filed a motion to strike, assigning as grounds therefor eleven reasons, briefly summarized as follows:

1. That no part of the actions complained of are alleged to have taken place in the immediate or direct presence of the court.

2. That the information contains no sufficient facts, which, under the law, should subject the respondent to become guilty of any contempt of court.

3. That there is nothing alleged in the information that seeks to prohibit or in any wise interfere with the free purpose and lawful actions of the Grand Jury.

4. That the information does not allege that any of the publications were false or untrue.

5. That it is not alleged that the respondent had done any wrongful or dishonorable thing and has not violated any law.

6. That the information is not specific, is unreasonable, contrary to law and the mere conclusion of the pleader.

7. That the information is totally insufficient in its failure to set forth fundamental principles of law.

8. That if it be the law that the respondent can be cited for contempt of court, then no citizen could be safe in informing any Grand Jury, by mouth, letter or otherwise, of a matter that he in good faith thought should be investigated as a misdemeanor, crime or felony and that it is not the law that a newspaper cannot publish any matters that it might deem proper matters of investigation by a Grand Jury, whether that Grand Jury be in session or about to be in session.

9. That page four of the information, in a certain quotation from the Liberty Press, shows that there is nothing in the entire paragraph that could possibly interfere in a Grand Jury finding indictments in any matters.

10. That the information further quotes from an article published in the Liberty Press and demonstrates that this publication itself did not impede or hinder the Grand Jury in its actions.

11. That it affirmatively appears, from a reading of the whole information that it is predicated upon malice and not upon justice.

The motion to strike the amended information was a repetition of the same grounds and same points contained in the motion made to strike the original information.

The Answer of the Respondent to the Amended Information.

The answer (briefly abstracted), in substance admits the publication of the various numbers of the Liberty Press but as to the allegation that he did deliver or cause to be delivered the copies of the said issues to the foreman and a majority of the members of the said Grand Jury, respondent admits that he did deliver some of the said issues to the foreman, Ed Kanitz, but states that said issues were always

delivered by boy carriers or special persons, delivering to the various residences by throwing the Liberty Press issues upon the porches of the various citizens of Piatt County, as is the common practice of newsboys delivering ordinary newspapers.

That with respect to the delivery or causing to be delivered copies of the said publications to the majority of the members of the Grand Jury, respondent says that he has no knowledge or way of determining what numbers of issues or to what Grand Jurors, any of the same were delivered, some having been delivered by carriers and some by mail.

The respondent denied that any of the said publications were, "with intention wilfully, maliciously and improperly to bring the cause of Justice into contempt and to interfere with and impede its due process, and thus to influence the said Grand Jury," but on the contrary, each and all of the said publications "were made with good motives, for good cause and justifiable ends, and that it was all the truth and no part published maliciously."

The answer further states with respect to each respective article that the same was not published maliciously or wilfully, to bring the cause of Justice into contempt or to interfere with or impede the Grand Jury, but that each respective article was the truth and was published with good motives, for good causes and for justifiable ends.

The answer contained two exhibits, marked "A" and "B", consisting of the affidavits of one Paul Silver and James Busick in which affidavits the respective affiants verify the statements made by the respondent in his answer concerning the connections of the respondent with the Grand Jury proceedings and the factual matters surrounding the Grand Jury's investigation and giving the details and connections of the States Attorney, Glasgow, with this special Grand Jury investigation.

C.

VERDICT.

The court denied the motion to strike the amended information, and upon the face of the pleadings previously reviewed, found the defendant guilty of contempt of court, fixed his punishment at three months in jail and a fine of two thousand dollars and costs of the proceedings.

Motion for stay of execution for seventy days granted; bill of exceptions to be presented within forty-five days; the defendant admitted to bail in the sum of two thousand dollars.

THE OPINION OF THE SUPREME COURT, STATE OF ILLINOIS.

The defendant having perfected his appeal to the Supreme Court of the State of Illinois, the same was considered by that court on printed briefs and arguments and taken under advisement until January 21, 1943, when the Supreme Court of the State of Illinois rendered its opinion affirming the judgment, conviction, fine and sentence of the Circuit Court of Piatt County.

REHEARING.

A petition for rehearing was aptly filed, but denied by the Supreme Court of the State of Illinois, by its order of March 11, 1943.

II.

Statement of Matters Involved and the Reasons Relied On for the Allowance of the Writ.

The discretionary power of this Court to grant writ of certiorari is invoked on the following grounds:

(First) The instant proceeding is a cause wherein the final judgment rendered by the Supreme Court of the State of Illinois, being the highest court of that State in which

a decision could be had, draws in question the validity of a Statute of the State of Illinois on the ground of its being repugnant to the Constitution and Laws of the United States.

(Second) The instant proceeding involves a trial right, privilege and immunity specifically set up and claimed by the defendant (petitioner) under the Constitution of the United States.

(Third) The decision of the Supreme Court of the State of Illinois denies to the petitioner the right of free speech and freedom of the press as defined and granted by the Constitution of the United States, Amendment I (Bill of Rights) and by the Constitution of the States of Illinois, Article II, Sec. 4.

(Fourth) The decision of the Supreme Court of the State of Illinois discloses a confusion and contradiction between the right of freedom of the press as granted by the Federal and State Constitutions and the right of a court to uphold its own dignity and to further judicial process by a denial of that right of free speech and freedom of the press.

(Fifth) The information for contempt here involved charges a matter arising out of and beyond the presence of the court and of a criminal nature. In proceedings charging a contempt out of the presence of the court, no evidence is heard and the respondent, by his mere affidavit may purge himself of the charged contempt. If the affidavits are false, he may be prosecuted for perjury. If the affidavits are true, the court is in duty bound to discharge the defendant. This, the Circuit Court of Piatt County did not do, and the affirmance of the conviction by the Supreme Court of the State of Illinois therefore denied to the petitioner, due process of law to which he was entitled in the State of Illinois.

The holding of the Supreme Court of the State of Illinois renders nugatory the provisions of the Bill of Rights of the Federal Constitution and the Constitution of the State of Illinois granting to the petitioner the right of freedom of speech and of the press, and is in conflict with the decisions of the following cases:

Harry Bridges v. *State of California,* 314 U. S. 252, 86 L. Ed. 192, decided Dec. 8, 1941;

Largent v. *State of Texas,* U. S. Tex., 63 S. Ct. 667, 669 (No. 559, October term, 1942, opinion March 8, 1943).

Jamison v. *State of Texas,* U. S. Tex., 63 S. Ct. 669, 671, 672 (No. 558, October term, 1942. Opinion March 8, 1943).

Conclusion.

Wherefore your petitioner prays that the writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Illinois, commanding said court to certify and send to this Court, a full and complete transcript of the record and of the proceedings of the said Supreme Court of the State of Illinois had in the case numbered 26862 and entitled, *People of the State of Illinois* v. *William A. Doss,* to the end that the decision and judgment of the said Supreme Court of the State of Illinois may be reviewed and determined by this Court as provided by the laws of the United States; and that the judgment herein of the said Supreme Court of the State of Illinois be reversed by this Court and for such further relief as this Court may deem just and proper.

WILLIAM A. DOSS,
Petitioner.

By A. M. FITZGERALD,
His Attorney.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Supreme Court of the State of Illinois appears in full in the record (R. 131). No formal opinion was rendered by the Circuit Court of Piatt County, Illinois.

II.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by Act of February 13, 1925, Section 344 (a), Title 28, U. S. C. A.

Dates of Judgment.

The judgment of the Supreme Court of Illinois was rendered January 21, 1943.

The order denying rehearing was dated March 11, 1943.

III.

Statement of Case.

A statement of the pleadings and formal procedures has previously been made in the petition for the writ of certiorari, such matters accordingly not being here repeated. The pleadings, however do disclose the factual situation giving rise to the present amended information, conviction and judgment and we briefly epitomize here the factual situations surrounding the present prosecution. Petitioner, William A. Doss, has been at odds with other practicing attorneys at the bar of his County for several years and as one method of upholding his rights as a practicing lawyer

and informing the public concerning the activities of the prosecution, he commenced about two years ago the publication of the paper or pamphlet known as The Liberty Press. This publication appeared as occasion demanded, and amounted, on the average of approximately four thousand copies of each issue. It was distributed by carrier boys who deposited the same upon the porches of the homes of the citizens of Piatt County, Illinois, and was mailed by a staff of high school girls who worked from mailing lists which included all prominent citizens of the County, public officials, supervisors, Judges, clerks, highway commissioners, and persons of influence in the County. Suffice to say that the publisher in every publication felt at liberty and duty bound to speak his mind freely, and whenever necessary or expedient, deemed it proper to give in detail facts, figures, dates, records, and witnesses disclosing improper conduct, unfair dealings, untruthful statements, coersion, intimidation and unethical practice on the part of the other members of the bar, including the State's Attorney of Piatt County, Illinois, Carl I. Glasgow, between whom and the petitioner there existed a feeling of personal animosity. Petitioner openingly stated in several publications that the State's Attorney, Carl I. Glasgow, was a disreputable person and an unfair prosecutor, giving in each instance illustrations in detail justifying such accusation. In various issues of the Liberty Press the petitioner openingly invited civil suit for damages at the hands of the State's Attorney or any other person who considered himself damaged by such publications and specifically stating if, as and when such damage suit should be instituted by any aggrieved person, he, the petitioner, would prove the truth of the charges so made in his publication and that same was published for justifiable ends and without malice is a complete defense in the State of Illinois. Civil

suits for damages have never been instituted but the State's Attorney has resorted to the present information for contempt of court as being a safe manner in which to strike back at the petitioner. Being himself the complaining witness before any Grand Jury, it was necessary that a Special State's Attorney be appointed to conduct any Grand Jury proceedings against the petitioner. A special order was obtained appointing Oliver D. Mann, a practicing lawyer of a neighboring city as Special State's Attorney to conduct the ensuing Grand Jury proceedings and investigation, but such order limited the proceedings of such Grand Jury to the single task of investigating and indicting the petitioner. In other words, the Grand Jury was not called to investigate all crimes and misdemeanors in Piatt County, but was called and specifically charged with the sole and only purpose of indicting the petitioner, William A. Doss. Upon being informed of the nature and purpose of this special Grand Jury proceedings, the petitioner availed himself of the only known method of informing the public of the ulterior aims and purposes of the opposition, namely, by issuing special numbers of his newspaper. The verified answer of the petitioner to the amended information disclosed without contradiction that no special effort was made to place those publications in the hands of the Grand Jury, but that the same were mailed and delivered by carrier boys in the same manner as the same had always been so mailed and delivered. It may be conceded that the language of the publications is intemperate, vitriolic at times and extremely pointed in many instances, but the intemperate nature of the articles and the pointedness of the statements therein contained, are not charged as being in and of themselves contemptuous; the information is predicated upon the thought that the articles did reach the hands of the Grand Jurors and necessarily therefore influenced the

actions of the Grand Jury, interfered with the processes of the court and the due administration of justice.

The above statements are made without reference to record pages for the reason that the circumstances of the above statements will readily appear throughout the entire record by a mere reading thereof.

IV.

Specifications of Error.

(1) The Supreme Court of the State of Illinois erred in affirming the judgment, conviction, fine and sentence of the Circuit Court of Piatt County, Illinois.

(2) The Supreme Court of the State of Illinois erred in affirming the judgment of the Circuit Court of Piatt County, Illinois, in that the Circuit Court of Piatt County, Illinois, denied to the petitioner due process of law, namely, the right to purge himself of the charged contempt of court by his own verified answer.

(3) The Supreme Court of the State of Illinois erred in holding that petitioner was guilty of contempt of the Circuit Court of Piatt County, by the mere publication of the articles appended to the amended information, thereby denying to the petitioner the right of freedom of speech and freedom of the press guaranteed by both the Federal and State Constitutions.

(4) The Supreme Court of the State of Illinois erred in sustaining the action of the trial court in its finding that the publications in question had interfered with the administration of justice and the Grand Jury proceedings in question.

(5) The Supreme Court of the State of Illinois erred in finding (contrary to the verified answer of the accused)

that the petitioner, "delivered or caused to be delivered a copy of each of them (the publications in question) to the foreman and the majority of the members of the Grand Jury."

(6) The Supreme Court of the State of Illinois erred in finding that, "the language of the excerpts is intemperate in the extreme, and consists largely of accusations against the members of the bar of Piatt County, and also attacks against the State's Attorney of the County, and also, the special State's Attorney, who was appointed special prosecutor to act with reference to the questions concerning the alleged violations of the criminal libel law by the defendant", in that such finding discloses that the Supreme Court of the State of Illinois has seemingly misconstrued the gist of the charge with the intemperate nature of the language used. The nature of the language used forms no part of the charged contempt. The contempt, as alleged in the information, consists solely of the delivery of the publications to the Grand Jurors.

(7) The Supreme Court of the State of Illinois erred in denying to the petitioner, the freedom of speech and of the press guaranteed to him by law.

Argument.

It is the opinion of petitioner that the instant case involves the precise issue involved in the case of *Bridges* v. *State of California,* decided by this court and appearing in 314 U. S. 252 (86 L. ed. 192). There is, and can be found, between the facts in the instant case and the facts in the foregoing decision, no possible distinction. In this case, as in the Bridges case, certain publications and statements were charged as constituting contempt of court and as inter-

fering with the due and proper administration of justice. In both cases, the charged contempt was indirect, not in the presence of the court. In the *Bridges* case, the published articles were charged to be in the nature of threats or intimidation of the presiding Judge. In the instant case the publications and statements were charged to have been coercive, critical and intimidating of a Grand Jury then in session. The issue of freedom of speech and of the press, was precisely raised by the petitioner in the trial court and in the assignments of error in the reviewing court, namely the Supreme Court of the State of Illinois. In the affidavits by which the petitioner answers the information in the State of Illinois, he admitted the publications, but denied that the same were intended by him to interfere with, coerce, or intimidate the court or the Grand Jury. In fact, a reading of the articles will convince this court that the same were not critical of either the court itself or the Grand Jury. The sole purport of the publications was to the effect that the Grand Jury should perform its whole duty and that it should, while in session, conduct an investigation concerning the activities and wrong doings of one Carl I. Glasgow, State's Attorney of Piatt County, Illinois. The activities and wrongdoings of said Carl I. Glasgow were detailed in the publications in vituperative and sarcastic language. The attack made by the publications as against said Glasgow, because of their viciousness may or may not be held libelous as against Glasgow, but nowhere in the published articles is any disrespect of the court displayed, nor anything intended to retard, influence or interfere with the legitimate duties of the Grand Jury.

We remind the court that we are not dealing in the instant petition with the question of libel or slander, nor with the question of whether the publications might be the basis

of a criminal prosecution. The only issue raised by the pleading was as to whether the published articles were intended to interfere with the due process of the Circuit Court of Piatt County, or its Grand Jury. This, as previously stated, was and is the identical point involved in the case of the *State of California* v. *Bridges,* and we accordingly find ourselves in a position where the instant conviction of the petitioner cannot be sustained unless the Bridges decision be reversed, and conversely, that if the Bridges decision be followed, then the conviction of petitioner must be set aside.

There is involved in the instant petition a conflict between the opposing rights of petitioner under the Constitution, to speak and write freely upon all subjects, and the opposing theory or right of a Court to be free and untrammeled in the administration of justice.

The same authorities presented in the Bridges case, and the same argument and discussion could be here repeated, but since such discussion and authorities would constitute mere repetition, we do not consider that it is here necessary to indulge such repetition. In lieu thereof, we invite a reading and consideration of the law, the authorities and the reasoning of the Bridges case.

We assert that it is the holding of the Bridges case and of this Court, that a contempt of court proceedings is no longer countenanced when the same interferes with the Constitutional right of a citizen to speak an write freely and that the sentence and fine meted out to the petitioner by the Circuit court of Piatt County, Illinois, and the affirmance thereof by the Supreme Court of the State of Illinois, should be reversed and set aside.

Conclusion

Wherefore it is respectfully submitted that the petitioner has been aggrieved by the decision of the Supreme Court of the State of Illinois, and that this case should be certified to this Court for its review and deterimnation.

Respectfully submitted,

A. M. Fitzgerald,
Attorney for Petitioner,
504 E. Monroe Street,
Springfield, Illinois.

APPENDIX.

Sec. 344 Title 28, U. S. C. A. (Judicial Code. Sec. 237)

Sub-section (b): It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a Statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

United States Constitution. Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Illinois Constitution. Article II. (Bill of Rights.)

Par. 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trial for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

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THE PEOPLE OF THE STATE OF ILLINOIS,

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BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 1091.

WILLIAM A. DOSS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

I.

The petition should be stricken or denied pro forma because the petitioner has deliberately, and without excuse failed to cite in his petition the pages of the transcript to which reference is made. The omission is not inadvertent because petitioner calls attention to his disregard of the Court's rules.

Counsel for the State of Illinois are ordinarily extremely reluctant to ask this court to deny to any litigant a review of the merits of his case for failure to comply with mechanical rules governing the preparation and presentation of briefs.

In the instant case, however, the rule in question (rule 27, paragraph 3), which provides that

> "a reference * * * to the record * * * must be accompanied by the record page number"

and that

> "when reference is to a part of the evidence, the page citation must be specific,"

has been disregarded by the petitioner.

Not a single reference to the record appears in the entire petition. The omission was not inadvertent, however, but is recognized and admitted to have been deliberate on the part of the petitioner. At page 17 of his petition, he says:

> "The above statements are made without reference to record pages for the reason that the circumstances of the above statements will readily appear throughout the entire record by a mere reading thereof."

There is not the slightest excuse for this intentional disregard of a rule which has been promulgated in order that this court may discharge its very heavy labors with dispatch and which is announced with the imperative verb "*must*" twice repeated in the single paragraph of its text.

We cannot forbear the observation that the subject matter of this proceeding is one involving the petitioner's alleged contempt for the orderly processes of the judiciary. Yet petitioner has not seen fit to comply with this court's mandatory rules governing the submission for review of his conviction of contempt of a circuit court of Illinois and his charge that the Supreme Court of that state has denied him due process of law.

We submit that the intentional and admitted disregard of the rule in question warrants striking of the petition or its dismissal *pro forma*.

II.

The petition should be dismissed because no substantial federal question is presented.

The petitioner relies entirely upon the authority of this court's decision in *Bridges* v. *California*, 314 U. S. 252, to support his contention that he had a constitutional right to influence a grand jury by direct communications, of the character and tenor here in question.

A perusal of the *Bridges* case—the only authority cited by petitioner—is sufficient to distinguish that case from the instant case.

In the *Bridges* case, the judicial officer sought or intended to be influenced by newspaper publications was a judge—that is, was the court itself.

In the instant case, the judicial organ in question was a grand jury. Argument is not required to distinguish between attempts to influence a judge and attempts to influence a jury, whether the jury be grand or petit. Ever since jurors ceased to be triers of the fact upon their common knowledge as members of the vicinage, the utmost care has been taken to insulate them from unofficial communications intended to affect their findings.

It is an inveterate common law rule that attempts to influence a grand jury are contemptuous; and it has long been held that it is immaterial that the medium of communication be actually or ostensibly a newspaper or other publication intended for general distribution if the purpose and fair intent of the communication is to affect the grand jury's finding. *People* v. *Parker*, 374 Ill. 524; *In re Tyler*, 64 Cal. 434; *Ex Parte Shuler*, 210 Cal. 377; *U. S.* v. *Providence Tribune Co.*, 241 Fed. 524; *Dale* v. *State*, 189 Ind. 110.

Wharton's Criminal Practice and Pleading (8th Edition, section 307) thus states the rule:

> "Sending an unofficial volunteer communication to the grand jury, inviting them to start, on their own authority, a prosecution, is a contempt of court, and a misdemeanor at common law."

In the margin, we repeat in part the language of Mr. Justice Field as quoted by Wharton on Criminal Procedure (10th Edition, section 1295).[1]

There can be no doubt of the intent of the publications in the instant case. The petitioner was himself under investigation by the grand jury in question for criminal libel, the alleged libel having consisted in similar publications made to a grand jury in session some two years previously. (R. 131, 9.) He had been disbarred for these prior communications. (R. 132.)

The publications charged and found to be contemptuous appear from pages 10 to 46, inclusive, of the record. In

1. "There has hardly been a session of the grand jury of this court for years at which instances have not occurred of personal solicitation to some of its members to obtain or prevent the presentment or indictment of parties. And communications to that end have frequently been addressed to the grand jury filled with malignant and scandalous imputations upon the conduct and acts of those against whom the writers entertain hostility, and against the conduct and acts of former and present officers of this court and of previous grand juries of this district. All such communications were calculated to prevent and obstruct the due administration of justice, and to bring the proceedings of the grand jury into contempt. 'Let any reflecting man,' says a distinguished judge, 'be he layman or lawyer, consider of the consequences which would follow, if every individual could, at his pleasure, throw his malice or his prejudice into the grand jury room, and he will, of necessity, conclude that the rule of law which forbids all communication with grand juries, engaged in criminal investigations, except through the public instructions of courts and the testimony of sworn witnesses, is a rule of safety to the community. What value could be attached to the doings of a tribunal so to be approached and influenced? How long would a body, so exposed to be misled and abused, be recognized by freemen as among the chosen ministers of liberty and security? The recognition of such a mode of reaching grand juries would introduce a flood of evils, disastrous to the purity of the administration of justice, and subversive of all public confidence in the action of these bodies.'"

the margin, we quote[2] a single excerpt from the publications in question. (R. 41.)

The manifest object of the publication was to prevent the indictment of the petitioner and to procure the indictment of the State's attorney. The petitioner admittedly delivered copies of his mimeographed "newspaper" to members of the grand jury. The contempt was flagrant.

The respondent submits that it is impossible to distort guarantees of freedom of speech and due process of law into sanctions for deliberate and overt attempts to influence the action of a grand jury.

The respondent further submits that the petition for *certiorari* should be denied.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

William C. Wines,
Assistant Attorney General,
Of Counsel.

2. Let no person in Piatt County especially the members of the present grand jury, and the members especially of the grand jury coming February 2nd, next, not to underestimate the great importance involved in the matters now pending before our grand jury as to whether or not, Judge Doss should, or should not, be indicted, fined or jailed for publications of matters in his Liberty Press, because if these matters, vital not only to me, but to the people of Piatt County, can be lightly treated—and the grand jury falsely made to believe that it is their imperative duty to follow the advice of a States Attorney, or an assistant States Attorney to indict upon such things merely because they advise it to be so, then, indeed, is the liberty of every citizen in Piatt County in jeopardy every hour that our present States Attorney, Carl I. Glasgow, may hold office, or any special States Attorney acting like him. (R. 41.)

Office - Supreme Court, U. S.
FILED
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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 100

WILLIAM A. DOSS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING.

A. M. FITZGERALD,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 100

WILLIAM A. DOSS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now William A. Doss, petitioner, in the above entitled cause and presents this, his petition for a rehearing of the order and decision of this Court dated October 11th, 1943, denying the application of petitioner for the writ of certiorari upon the ground that said application was not filed "within the time provided by section 350 Title 28 U. S. C. A., 43 Stat. 940, etc.", and in support thereof respectfully shows:—

I.

The petition for rehearing in the Supreme Court of Illinois was disposed of on March 11th, 1943. The applica-

tion for certiorari was lodged with the Clerk of the Supreme Court of the United States prior to June 11th, 1943, costs were paid, printing completed and the complete transcript of record, together with the application for certiorari itself, were filed with the Clerk of this Court on June 11th, 1943. The printed copy forwarded by the Clerk to counsel for service contained and still contain, on the face thereof, the official file mark of the Clerk dated June 11, 1943. Service was promptly had upon opposing counsel and proof of service lodged with your Clerk within the ten days provided therefor.

We believe that the Clerk's records when examined will substantiate each of the foregoing statements and that it thus officially appears of record that our application for certiorari was actually and physically filed in exact compliance with the statute.

II.

Since the Clerk's record indisputably shows that our application for certiorari was filed within the period of three months provided by the statute, we are forced to assume that such application is denied through some judicial interpretation or construction of the statute. Since no opinion is filed, elucidating the assumed construction and interpretation of the statute, we have painstakingly examined the entire record and corresponded with the Clerk of this Court in an endeavor to discover the basis for the order of denial. The only possible basis which counsel can discover appears to be based upon the fact that the petition for rehearing seasonably lodged in the Supreme Court of Illinois, was on March 11th, 1943, "stricken as in violation of rules" rather than being dismissed or denied on its merits. We accordingly devote the remainder of this petition to a presentation of the authorities dealing with such subject matter.

(A) No decision of this Court, no text writer, no work on Federal Procedure, has been found after ex-

haustive research, which precisely or definitely supports the interpretation or construction which we now assume as the basis for the order of denial.

(B) The reported decisions are uniform to the effect that *finality of the judgment sought to be reviewed is the decisive factor and time element provided by the three months statute* now in question.

(C) The three months period specified in section 350 Title 28 U. S. C. A., 43 Stat. 940, commences to run from —— and does not commence to run until —— the date when such judgment becomes *FINAL.*

(D) Where a rehearing is permitted by Statute or rule of Court as a matter of right, (no leave or motion therefor being necessary) and the same is filed seasonably, taken under advisement, considered by the Court or entertained, then the decision or opinion (under date of January 21, 1943) does not become an appealable *JUDGMENT* until such rehearing is *disposed of.* (March 11, 1943)

Citizens Bank v. *Opperman,* 249 U. S. 448, 63 L. Ed. 701;

Andrews v. *Virginian Ry. Co.,* 248 U. S. 272, 63 L. Ed. 236;

Natl. Labor Rel. Bd. v. *Mackay Radio & T. Co.,* 304 U. S. 333, 82 L. Ed. 1381;

Chicago Gr. W. Ry. Co. v. *Basham,* 249 U. S. 164, 63 L. Ed. 534;

Morse v. *U. S.,* 270 U. S. 151, 70 L. Ed. 518;

U. S. v. *Seminole Nation,* 299 U. S. 417, 81 L. Ed. 316.

(E) The manner or nature of "such disposition" is immaterial. The sole question is—and has always been —*when* such rehearing is disposed of or *WHEN* the judgment of the lower Court became final, rather than how or why the rehearing was so disposed of.

Thomas Day v. *Doble Laboratories*, 41 Fed. (2d) 51, from which we briefly quote at page 52:

> "To have the effect of tolling the statutory limitation for appeals it is, of course, not essential that the petition for rehearing be well taken, and it would seem to follow that if it is defective in form or substance, and is denied for that reason it would still have such effect. True, if it is a mere sham it may be wholly ignored; but if, acting in good faith, a party files a petition which is ultimately held deficient because it does not meet some requirement of the rules in respect of either form or substance, it operates to postpone the finality of the decree until it is disposed of."

Andrews v. *Virginian Ry. Co.*, 248 U. S. 272, 63 L. Ed. 236, from which we quote as follows (at page 275):

> "It is true that under the law of Virginia in a case like this the power of the Court of Appeals to review the judgment of the trial Court was gracious or discretionary, and not imperative or obligatory, but the existence of the power, and not the considerations moving to its exercise is the criterion by which to determine whether the judgment of the trial Court was final at the time of its apparent date or became so only from the date of the happening of the condition,—the action of the Court of appeals,—which gave to that judgment its only possible character of finality for the purpose of review in this Court. Nor is the result thus stated a technical one, since it rests upon the broadest considerations inherent in our Constitutional system of Government, and material therefore to the exercise by this Court of its rigthful authority. That this is true would seem to be demonstrated by considering that if it were not so a judgment of a state court, susceptible of being reviewed by this Court, would, notwithstanding that duty be open at the same time to the power of a State Court to review and reverse, thus in substance depriv-

ing each Court of its powers and begetting the possibility of conflict and confusion."

Chicago Great W. R. Co. v. *Basham,* 249 U. S. 164, 63 L. Ed. 534, from which we briefly quote:

> "Section 237 Judicial Code permits of the review by this Court only of the final judgments of the highest State Court in which a decision in a suit could be had. It is only a judgment marking the conclusion of the course of litigation in the Courts of the State that is subject to our review. Hence whatever its form of finality, if a judgment be in fact subject to reconsideration and review by the State Court of last resort thru the medium of a petition for rehearing, and such a petition is presented to and entertained and considered by that Court, we must take it that by the practice prevailing in the State, the litigation is not brought to a conclusion until the petition is *disposed of* and until then the judgment previously rendered cannot be regarded as a final judgment within the meaning of the Act of Congress."

III.

To now interpret or construe the statute in the manner which we are forced to assume this Court has done would enable the highest Court of the respective States (Supreme Court of Illinois) to absolutely deny and prevent a review by certiorari in this Court, by merely holding the rehearing under advisement for three months before striking it from the files. The litigant can only patiently await the decision of the highest State Court and having so waited would find that his certiorari is impossible because of the manner, method, reasons for, or nature of disposition made of the petition for rehearing rather than being guided by the date or time of such disposition. (In Illinois when a rehearing is filed at the May term of our Supreme Court, disposition of such rehearings are not made until the convening of the

September term, and if at the September term the rehearing be stricken, then the litigant would never be permitted to avail himself of the statutory review by certiorari.)

IV.

Where a rehearing has been filed or motion for new trial made and pending such rehearing or motion litigant has applied for certiorari the Courts have uniformly dismissed the application for certiorari or appeal, as prematurely filed.

Chicago G. W. Ry. Co. v. *Basham,* 249 U. S. 164, 63 L. Ed. 534 ;

Shallas v. *U. S.,* 37 Fed. 2d, 692;

Rardin v. *Messick,* 78 Fed. 2d, 643.

V.

If our assumption be correct that this Court has denied certiorari because the rehearing was stricken instead of being denied, then such a new, important, and far reaching decision should become the subject of a full published opinion so that in the future the litigants and their attorneys may be informed, understand and be governed by such interpretation, construction, and decision. Counsel have made a careful, painstaking, thorough search and have been unable to find a single decision precisely supporting the ruling which we now assume this Court to have made.

VI.

We are aware of the many decisions to the effect that a rehearing or motion for new trial which is not filed within the proper time, or where a motion is made for leave to file and later leave is refused, or where a second, unauthorized motion or petition is filed and later denied, that such belated, unseasonable and unauthorized applications do not

toll the limitation period provided by statute. A review or citation of such authorities can be of no assistance in the instant case and are accordingly not here cited.

VII.

In Illinois a rehearing is not discretionary or matter of grace. All litigants may apply for a rehearing as a matter of right by giving notice within fifteen days after the opinion and by filing the petition for rehearing within twenty-five days after the opinion. (See Rule 44 Ill. Sup. Ct. printed in appendix hereto.)

It is apparent from the transcript now before this Court that the decision and opinion of the Illinois Supreme Court was rendered on January 21, 1943 (Tr. pp. 137-8); that the petition for rehearing was filed on February 15, 1943 (Tr. 139); that the order disposing of such rehearing was entered March 11, 1943 (Tr. 139), and that such order indicates that the petition for rehearing "was duly considered, and the Court being fully advised in the premises" did strike the same as in violation of rules.

By reference to the foregoing pages of the transcript it is demonstrated that the petitioner William A. Doss, carefully complied with the time element wherever required throughout the proceedings; that the rehearing in Illinois is a matter of right, was seasonably filed, entertained by the Court, and disposed of on March 11th, which is exactly three months prior to the present application for certiorari.

Conclusion.

Wherefore, upon the foregoing grounds it is respectfully urged that this petition for a rehearing be granted and that the order and judgment of this Court denying such application for certiorari as not made within the time provided by

law be upon further consideration reversed, and that such petition for certiorari so filed, be granted so that the cause may be considered upon its merits.

Respectfully submitted,

A. M. FITZGERALD,
Counsel for Petitioner.

I, Counsel for the above named William A. Doss, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

A. M. FITZGERALD,
Counsel for Petitioner, William A. Doss.

Subscribed and sworn to before me this 30th day of October, A. D. 1943.

NELLIE D. MICHAELS,
Notary Public.

[SEAL.]

APPENDIX.

44

Rehearings in Reviewing Court.

(1) A party desiring a rehearing in any cause in the Supreme Court shall within fifteen (15) days after the filing of the opinion file with the clerk and deliver to the official reporter a notice in writing of his intention to ask for a rehearing, and within twenty-five (25) days after the filing of the opinion he shall file with the clerk fifteen (15) copies of the petition, printed in accordance with Rule 40 with proof of service on opposite counsel, and deliver a copy thereof to the official reporter. The petition shall state briefly the points supposed to have been overlooked or misapprehended by the court, with proper reference to the particular portion of the original abstract and brief relied upon, and with authorities and suggestions, concisely stated, in support of the points. Arguments in support of the petition will not be permitted. Any petition violating this rule will be stricken.

(2) If a petition for rehearing shall be presented to one of the justices and he shall be of the opinion the case should be further considered by the court on such petition, he shall stay all further proceedings in the cause until the next term. Such application shall be presented, if practicable, to the justice who wrote the opinion.

(3) When a rehearing is granted the cause shall be placed at the foot of the docket for hearing. The original briefs of the parties, and the petition for rehearing, answer and reply, shall stand as briefs on the rehearing. The opposite party shall have 15 days from the granting of the rehearing to answer the petition and the petitioner shall have five days to file his reply. Copies of each shall be served on opposing counsel. Oral argument will not be permitted unless ordered by the court on its own motion.

Petitions for rehearing in the Appellate Court shall be governed by the rules of such courts.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS,
Supreme Court, ss:

I, Edward F. Cullinane, Clerk pro tempore of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the foregoing to be a true copy of Rule 44 of the Rules of Practice and Procedure adopted by the Supreme Court of the State of Illinois and in effect since November 25, 1941.

Witness: my hand and seal of said Supreme Court, in Springfield, in said State, this 29th day of October, A. D. 1943.

EDWARD F. CULLINANE,
[SEAL.] *Clerk pro tempore.*

United States Statutes Relied Upon.

It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, to any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

U. S. C. A. Title 28, Sec. 344, 43 Stat. 937.

Sect. 350. Time for Making Application for Writ of Error, Appeal or Certiorari; Stay Pending Application for Certiorari. No writ of error, appeal or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Phil*l*ip-ine Islands may be granted where application therefor is made within six months. For good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court.

U. S. C. A. Title 28, Sec. 350, 43 Stat. 940.

Receipt for Service.

Received a full and complete copy of the foregoing Petition for re-hearing, this 30th day of October, A. D. 1943.

GEORGE F. BARRETT,
Attorney General for the State of Illinois,
Attorney for Respondent.

STATE OF ILLINOIS,
County of Sangamon, ss:

A. M. Fitzgerald, Being first duly sworn, on oath deposes and states that on October 30th, 1943, he caused to be served upon George F. Barrett, Attorney General of the State of Illinois, a full and complete copy of the foregoing petition for re-hearing, which service is evidenced by the above receipt of the Attorney General of Illinois.

A. M. FITZGERALD.

Subscribed and sworn to before me this 30th day of October, A. D. 1943.

NELLIE D. MICHAELS,
Notary Public.